IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 439 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

PRAJAPATI NARESHBHAI LALJIBHAI

Appearance:

1. Criminal Appeal No. 439 of 1996

Mr. I.M. Pandya, APP for the appellant

Mr.Jal Unwala with MR PK JANI for Respondent No. 1-3

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 26/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. By means of filing this appeal under Section 378 of the Code of Criminal Procedure, 1973, the State of Gujarat has questioned correctness and legality of the judgment and order dated April 18, 1996, rendered by the learned Additional Sessions Judge, Camp at Patan, Mehsana, in Sessions Case no.69 of 1995, by which the respondents-original accused came to be acquitted of the offences under Sections 323, 325,114 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

2. The prosecution case is summarised as under:

3. The complainant, Mahendrakumar, was a resident of Town Patan and he was doing the business of manufacturing bricks. On November 23, 1994, he was riding a bicycle and proceeding in the direction of his residence and, at that time, accused No.2, Hashmukhbhai, who was sitting on a cot, was dashed with the pedal of the bicycle. There was heated exchange of words between them. At about 11.45 a.m. the accused No.2, Hashmukhbhai, took out an iron pipe and launched attack on the complainant, Mahendrakumar, and inflicted blow with the iron pipe on his head. The accused No.1, Nareshbhai Laljibhai, who was carrying a wooden log, had inflicted a blow with the wooden log on the back portion of the body of the complainant. Similarly, accused No.3, Durgaben Laljibhai, had inflicted blow with the wooden plank on the left elbow of Bachiben, who is the mother of the complainant. The complainant lodged First Information Report before the Patan Town Police Station for the offences under Sections 323, 325,114 of the Indian Penal Code and under Section 135 of the Bombay Police Act, which was registered at CR. No.I-263 of 1994. The investigation of the above crime was entrusted to PSI, Brahmabhatt. The complainant, Mahendrabhai and his mother Bachiben had taken treatment for the injuries at Patan Civil Hospital. PSI, Brahmabhatt, had recorded statements of witnesses and had drawn panchanama of scene of offence. The weapons used in commission of offence were recovered under a panchanama drawn under Section 27 of the Indian Evidence Act. On receipt of the injury certificate with regard to the injuries sustained by the complainant and injured witness, Bachiben, and, on completion of investigation, chargesheet was filed against the respondents for the offences punishable under Sections 323, read with Section 325, and 114 of the Indian Penal Code and Section 135 of the Bombay Police Act. The chargesheet was filed in the Court of the

learned Judicial Magistrate, First Class, Patan, and it came to be registered as Criminal Case No.298 of 1995. The learned Judicial Magistrate, First Class, committed the case to the Court of Sessions, Mehsana, where it came to be numbered as Sessions Case No.69 of 1995.

4. Charge was framed against the respondents for the offences punishable under Sections 323, 325,114 of the Indian Penal Code and under Section 135 of the Bombay Police Act. The charge was read over and explained to all the respondents-accused wherein they pleaded not guilty and claimed to be tried. The prosecution, in order to prove the charges framed against the respondents examined: (1) P.W.1, Pravin Chimanlal Prajapati Exh.17; (2) P.W.2, Hashmukhbhai Shankerlal Exh.19; (3) P.W.3, complainant, Mahendrakumar Jayrambhai Exh.23; (4) P.W.4, Bachiben Jayrambhai, Exh.25 (5) P.W.5, Dr. Arvindbhai Hargovandas, Medical Officer of Patan Civil Hospital, Exh.26; and (6) P.W.6, Investigating Officer, PSI, V.S. Brahmabhatt of Patan City Police Station, Exh.33. The prosecution also produced documentary evidence such as First Information Report, injury certificates of Mahendrakumar and Bachiben, panchanama of place of incident, discovery panchanama, etc.

5. After the evidence of the prosecution was over, all the accused persons were questioned generally and their statements came to be recorded under Section 313 of the Code. The defence of the accused persons was of general denial.

6. The learned Additional Sessions Judge, on appreciation of oral as well as documentary evidence and the arguments advanced by the learned Additional Public Prosecutor and the learned advocate for the accused persons, acquitted the respondents mainly on the ground that the genesis of occurrence of the incident was suppressed by the prosecution and the injuries sustained by the accused persons were not explained by the witnesses examined by the prosecution.

7. The learned APP, Mr. I.M. Pandya, for the appellant and learned advocate, Mr. Jal Unwala for the respondents have taken us through the entire record and proceedings of Sessions Case No.69 of 1995.

8. We have closely scrutinized and reappreciated the evidence of prosecution. We do not find any infirmity or perversity in recording acquittal of the respondents by the learned Additional Sessions Judge. This is an acquittal appeal in which the court would be slow to

interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned Additional Sessions Judge who had an advantage of observing demeanour of witness. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Additional Sessions Judge for acquitting the respondents. Suffice it to say that the learned Additional Sessions Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Additional Sessions Judge in order to convince us to take the view contrary to the one already taken by the learned Additional Sessions Judge. Therefore, the acquittal appeal deserves to be rejected.

9. For the foregoing reasons, we do not find any substance in the appeal. The appeal, therefore, fails and is dismissed. The bail bonds stand cancelled. The muddamal be destroyed in terms of directions given in the judgment of the learned Additional Sessions Judge.

(M.H. Kadri, J.)

(Akshay H. Mehta, J.)
(swamy)